(17,976.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 491.

THE MICHIGAN SUGAR COMPANY, PLAINTIFF IN ERROR,

vs.

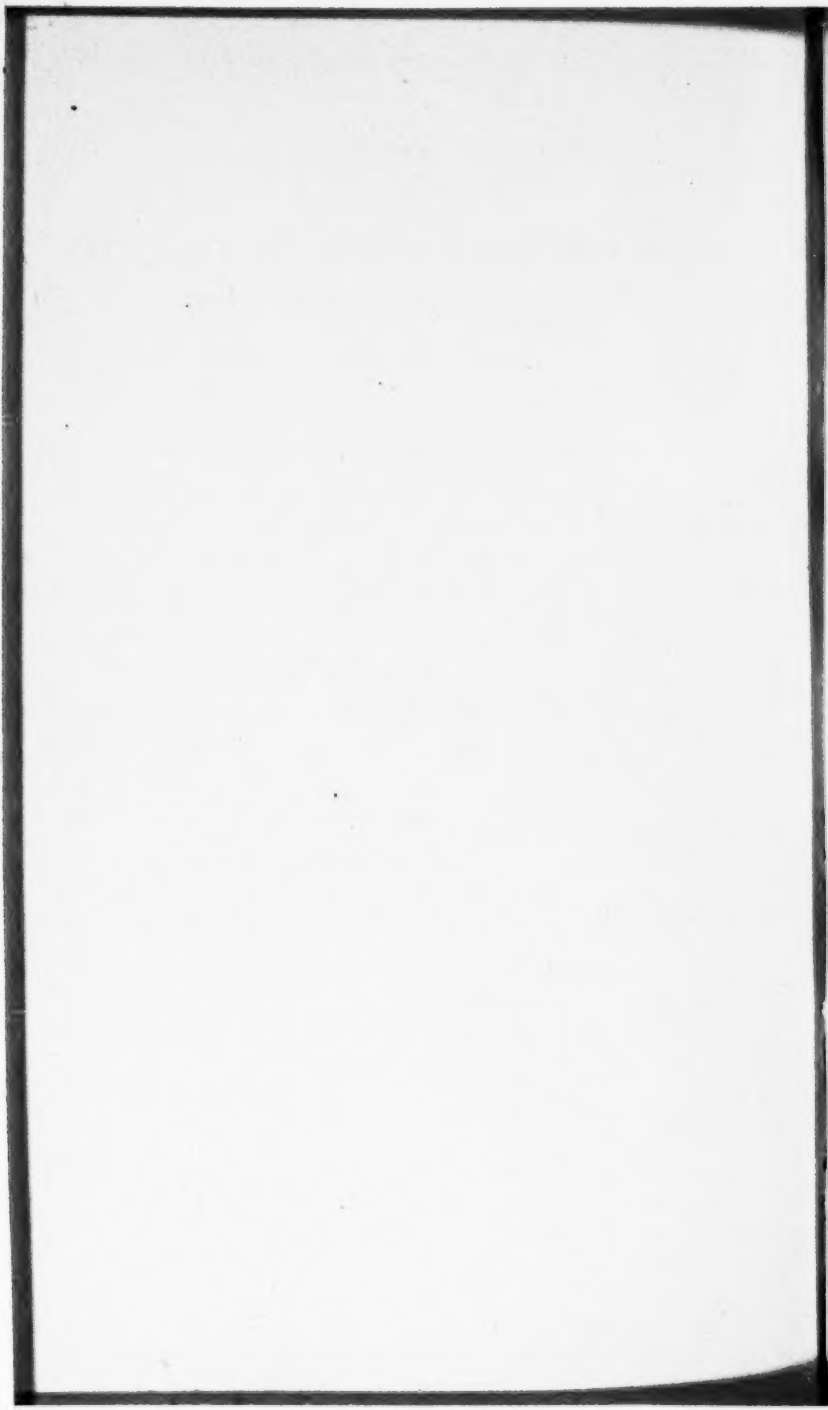
ROSCOE D. DIX, AUDITOR GENERAL OF THE STATE OF MICHIGAN.

IN ERROR TO THE SUPREME COURT OF THE STATE OF MICHIGAN.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., APRIL 12, 1901.



1 Supreme Court.

THE MICHIGAN SUGAR COMPANY, a Corporation, Relator,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent.

To the supreme court of Michigan:

Your petitioner, The Michigan Sugar Company, the above-named relator, respectfully represents that—

1st. It is a corporation organized and existing under the laws of the State of Michigan, with its principal office at Bay City, in said State; that it was organized on, to wit, the ninth day of December, A. D. 1897, for the purpose, among other things, of engaging in the manufacture in the State of Michigan of sugar from sugar beets grown in said State, and it has since the date of its organization been continuously engaged in that business and no other.

2nd. It was organized with a capital stock of $200,000.00, all of which was paid in, and during the years A. D. 1898–'99 it erected, perfected, and completed a sugar factory at the village of Essexville, in the State of Michigan, at a total cost of $288,310.99, *that* said company being organized, the capital stock thereof subscribed and paid in, and the said factory erected at the cost above mentioned (such additional cost having been provided for by borrowing capital on the faith and credit of the corporation and its property) in
2 reliance upon and because of the adoption by the legislature of the State of Michigan of act No. 48 of the Public Acts of 1897, being an act entitled "An act to provide for the encouragement of the manufacture of beet sugar and to provide a compensation therefor and to make an appropriation therefor."

3rd. It commenced its first campaign as soon as possible after the completion of its factory, and on, to wit, during the month of October, A. D. 1898, and the said first campaign closed when the crop of sugar beets raised during the year 1898 was exhausted, and during, to wit, the month of February, A. D. 1899; that all contracts for the purchase of beets were made with the farmers of the State of Michigan, and all sugar manufactured was from sugar beets raised within said State during the year 1898, the contracts used being in form complying with the provisions of said act 48 of the Public Acts of 1897. All sugar beets received during the said campaign of 1898–'99 were weighed, paid for, handled, and manufactured in accordance with the terms and provisions of said act, and it has not only complied with the provisions of said act in all respects, but has furnished proof of such compliance to the commissioner of the State land office.

4th. After the commencement of the campaign of 1898–'99 it presented its claim under date of December 2nd for a bounty on 1,422,591 pounds of sugar amounting to the sum of $14,225.91, and under date of December 29th for a bounty on 1,422,516 pounds of

sugar amounting to $14,225.16; which said claims were approved by the commissioner of the State land office, and for which moneys the auditor general drew his warrants upon the State treasury; which said warrants were paid; that on, to wit, the 28th day of June, A. D. 1899, it presented its claim under date of January 31st, 1899, for a bounty on 1,636,149 pounds of sugar amounting to $13,631.49, and under date of February 20th, 1899, for a
3 bounty on 1,063,150 pounds of sugar amounting to $10,631.50, both of which claims for sugar manufactured, as stated, were presented to and approved by the commissioner of the State land office; which said claims and the approval thereof by the said commissioner are in the words and figures following, to wit:

State of Michigan to the Michigan Sugar Company, Dr.

Date.		
1899.		
Jan. 31.	To bounty on 1,363,149 pounds of sugar, manufactured under the provisions of act 48, Laws of 1897, quantity and quality verified in statements filed with the commissioner of the State land office	$13,631.49

STATE OF MICHIGAN, } ss:
Bay County, }

Henry S. Raymond, secretary of the Michigan Sugar Company, being duly sworn, says that the above is a true and correct statement of bounty due; that this claim has not heretofore, nor any part thereof, been allowed or paid.

(S'g'd). HENRY S. RAYMOND,
Secretary of the Michigan Sugar Co.

Sworn to and subscribed before me this thirty-first day of January, A. D. 1899.

SAMUEL P. CRANAGE,
Notary Public, Bay County, Michigan.

I hereby certify that I have verified the above claim for bounty by sworn statements and returns now on file in my office, and the amount thereof is approved at the sum of thirteen thousand six hundred thirty-one and $\frac{49}{100}$ dollars.

Dated June 28, 1899.

WM. A. FRENCH,
Commissioner of State Land Office.

$——.

Received of the auditor general a warrant upon the treasurer of the State of Michigan for the sum of —— dollars and —— cents, in full of the above account.

Date: ——.

(Signed) —— ——.

4 State of Michigan to the Michigan Sugar Company, Dr.

Date.		
1899.		
Feb. 20.	To bounty on 1,063,150 pounds of sugar, manufactured under the provisions of act 48, Laws of 1897, quantity and quality verified in statements filed with the commissioner of the State land office	$10,631.50

STATE OF MICHIGAN, } ss:
Bay County, }

Henry S. Raymond, secretary of the Michigan Sugar Company, being duly sworn, says that the above is a true and correct statement of bounty due; that this claim has not heretofore, nor any part of it, been allowed or paid.

HENRY S. RAYMOND,
Secretary of the Michigan Sugar Company.

Subscribed and sworn to before me this second day of March, A. D. 1899.

SAMUEL P. CRANAGE,
Notary Public, Bay County, Michigan.

I hereby certify that I have verified the above claim for bounty by sworn statements and returns now on file in my office, and the amount thereof is approved at the sum of ten thousand six hundred thirty-one and $\frac{50}{100}$ dollars.

Dated June 28th, 1899.

WM. A. FRENCH,
Commissioner of the State Land Office.

$——.

Received of the auditor general a warrant upon the treasurer of the State of Michigan for the sum of —— dollars and —— cents, in full for the above account.

Date: ——.

(Signed) —— ——.

That the manufacture of sugar upon which said bounty was claimed and for which said bills were presented was in all respects, ways, and manners in strict accordance with the provisions
5 of act No. 48 of the Public Acts of 1897.

5th. That afterwards the claims for bounty, true copies of which are given above, were presented to Roscoe D. Dix, auditor general of the State of Michigan, and demand made upon him for warrant upon the treasurer of the State of Michigan for the sums of money so due and owing, and the said auditor general declined to issue his warrant therefor, and again, and on, to wit, the 7th day of December, A. D. 1899, the said claims for bounty under dates of January 31st and February 20th, 1899, above referred to, were again called to the attention and presented to the auditor general of the

State of Michigan, and demand made upon him for his warrant upon the treasurer of the State of Michigan for the sums, and the said auditor general again declined to issue or deliver such warrant or warrants, and stated that "under the advice of the attorney general he must withhold the warrants requested until the courts had declared that such warrants should be issued," and the said auditor general still declines to issue his warrant until such direction is given.

6th. That the legislature of 1889 at its general session held in pursuance of the constitution and laws of the State of Michigan, and prior to the 23rd day of June, A. D. 1899, had under consideration a bill, which was adopted and became act No. 263 of the Public Acts of 1899, entitled "An act to provide a tax to meet the several appropriations for which a tax is not otherwise provided, for the general expenses of the State government, salaries of the State officers, expenses of the State departments, and expenses of the legislature for the years eighteen hundred ninety-nine and nineteen hundred;" which said bill was referred to the committee on ways and means of the said legislature and reported by the said committee, which recommended its adoption, and in support thereof the said ways and means committee procured and caused to be made a statement showing the different appropriations for and on account of which it was necessary said bill should be adopted and become an
6 act of said legislature; which said statement was submitted to and read to the legislature, as your petitioner is informed and believes, by the chairman of the committee on ways and means of the house and by the committee to which said bill was referred in the senate; which said statement is in words and figures following, to wit:

STATEMENT "A,"

Showing estimated expenses for the purposes named for the years 1899 and 1900; also several deficiency items.

	1899.	1900.
Salaries of State officers	$75,000.00	$75,000.00
" " extra clerks	90,000.00	90,000.00
" " judiciary	150,000.00	150,000.00
Expenses of "	8,000.00	8,000.00
" " legislature	160,000.00	
Expenses of legislature (extra session 1898)	21,140.00	
Expenses of boards of State institutions.	12,000.00	12,000.00
Agent State public school and attendant.	2,500.00	2,500.00
" Industrial School for Boys	700.00	700.00
" " Home for Girls	1,000.00	1,000.00
Game and fish warden	3,200.00	3,200.00
Deputy game and fish warden	4,200.00	4,200.00
Live stock commission	3,500.00	3,500.00
Board of visitors to State institutions	250.00	250.00
Advisory board in the matter of pardons.	5,500.00	5,500.00

Expenses of conveying convicts to State prison	4,500.00	4,500.00
Expenses of conveying convicts to house cor.	5,000.00	5,000.00
Expenses of conveying convicts to branch prison	2,000.00	2,000.00
Apprehension of escaped convicts	800.00	800.00
Transportation of children to and from State public school	2,500.00	2,500.00
Transportation of children to industrial school and industrial home	7,000.00	7,000.00
Transportation of convicts to Detroit house of correction	800.00	800.00
Transferring convicts between prisons	800.00	800.00
Support of female convicts det. house of correction	2,500.00	2,500.00
Care of juvenile offenders	10,000.00	10,000.00
Medical treatment of children	600.00	600.00
Interest and fees collected for counties and paid to them by State	150,000.00	150,000.00
Uncollected State tax	75,000.00	75,000.00
Fire and accident contingent fund	30,952.16	
Awards of board of State auditors.	230,000.00	230,000.00
7 Costs of suits	12,000.00	12,000.00
Coroner's fees	3,000.00	3,000.00
Wolf bounties	500.00	500.00
Lynx "	1,000.00	1,000.00
Expenses State banking department	20,000.00	20,000.00
" " board of auditors	2,500.00	2,500.00
Fugitives from justice	500.00	500.00
Beet-sugar bounty, excess of earned bounty over tax	42,714.06	
Sundry disbursements	20,000.00	20,000.00
	$1,161,906.22	$907,100.00

STATEMENT "B,"

Showing continuing annual appropriations by previous legislatures which contain no tax clauses.

	1899.	1900.
Teachers' institutes	1,800.00	1,800.00
Soldiers' and sailors' monument	100.00	100.00
Geological survey	8,000.00	8,000.00
State board of health	4,000.00	4,000.00
State board of charities and corrections	5,000.00	5,000.00
University-Homeo. college	6,000.00	6,000.00
Relief supreme court	4,000.00	4,000.00

Officers' salaries—Eastern asylum	12,000.00	12,000.00
" " Northern "	12,000.00	12,000.00
" " Michigan "	12,000.00	12,000.00
" " U. P. hospital	8,000.00	8,000.00
" " State asylum	4,500.00	4,500.00
Bureau of labor and inds. statistics	8,000.00	8,000.00
Commissioner of mineral "	2,500.00	2,500.00
Factory inspection	12,000.00	12,000.00
Riverside Cemetery trust funds	12.00	12.00
Footings	$99,912.00	$99,912.00

8 STATEMENT "C,"

Showing the disbursements and settlements authorized by present legislature by acts and resolutions containing no clauses for the following purposes, and in some cases, the increase in standing appropriations, the amount authorized by previous legislatures being found in statement "B."

	1899.	1900.
Michigan Pioneer Association	1,500.00	1,500.00
Permanent forestry commission	2,000.00	2,000.00
Claim of Wm. T. Densmore	180.00	180.00
Relief of compiler of compiled laws	800.00	
" " Thomas Allen	120.00	120.00
History of Michigan organizations at Chickamauga and Chattanooga, etc	3,000.00	
Claim of George J. La Du	2,000.00	
Teachers' institutes (increase)	1,200.00	1,200.00
Factory inspection "	3,000.00	3,000.00
Inspection of coal mines	1,500.00	1,500.00
Printing geological reports	4,000.00	
Claim of George W. Crump	2,000.00	
Relief of John Henry Bartrem	2,000.00	
" " Louis Schmidt	1,500.00	
Return and burial of deceased soldiers from Cuba, Porto Rico, etc	2,000.00	
House bill # 219, day School for Deaf	5,000.00	10,000.00
Senate bill # 287, purchase of records of U. S. Supreme Court	6,000.00	
Senate J. R., # 17, relief of Ben Stressen Reuter	300.00	300.00
Experiment-station bulletins	4,000.00	4,000.00
Beet sugar	50,000.00	150,000.00
Footings	$92,100.00	$173,800.00

9 STATEMENT "D,"

Showing estimated receipts which will be credited to the general fund and become applicable to the expenses of the Government; also the portion of the current expense appropriation for the six months ending June thirty, which is included in the tax clauses for the institutions in 1899 by classes and items, as follows:

Estimated receipts.	1899.	1900.
Educational lands	$60,000.00	$60,000.00
Salt spring, State building and asylum lands	600.00	600.00
Session laws and reports	5,400.00	5,400.00
Interest on surplus funds	25,000.00	25,000.00
Rents	1,200.00	1,200.00
Fees, commissioner of deeds	50.00	50.00
" peddlers' licenses	2,000.00	2,000.00
" notaries public	2,200.00	2,200.00
" State departments	25,000.00	25,000.00
" " oil inspector	12,000.00	12,000.00
Town plats	100.00	100.00
U. S. support of soldiers	40,000.00	40,000.00
State banking department	10,000.00	10,000.00
Sundry receipts from sources not mentioned in present estimate	15,000.00	15,000.00
	$198,550.00	$198,550.00

Tax Levied in 1899 *for Current Expenses of Fractional Year.*

Institutions.	Amounts.
School for Blind	7,028.75
College of Mines	10,927.50
School for Deaf	18,812.50
Soldiers' Home	27,750.00
Home for Feeble-minded	13,500.00
Industrial Home for Girls	11,411.75
" School for Boys	15,000.00
State public school	7,750.00
Central normal school	6,250.00
State normal college	16,575.00
" library	3,750.00
	$138,765.50

10 *Recapitulation of Statements "A," "B," and "C" and "D."*

	1899.	1900.
From statement "A"	$1,161,906.22	$907,100.00
" " "B"	99,912.00	99,912.00
" " "C"	92,100.00	173,800.00
	$1,353,918.22	$1,180,812.00
Deduct " "D"	337,315.50	198,550.00
	$1,016,602.72	$982,262.00

and the original thereof is now on file in the office of the State accountant.

7th. That your petitioner only was engaged in the business of manufacturing sugar from sugar beets during the campaign of 1898–'99 and from sugar beets raised in the State of Michigan during the year A. D. 1898, no other factory in said State having been constructed or having actually manufactured sugar from sugar beets grown during the said year of 1898 or manufactured during the campaign of 1898–'99; that the sum of $10,000.00 was appropriated from the general fund by the said act No. 48 of the Public Acts of 1897, to be known as the "Beet-sugar fund," and the auditor general was authorized to and did levy a tax of $5,000.00 for the year 1897 and the year 1898 to reimburse the treasury for the sum thus appropriated and the excess of bounty for the years 1897 and 1898, so far as the same were presented, were paid out of the general fund; that at the time of the consideration of said act No. 263 of the Public Acts of 1899 your petitioner had presented claims for bounty earned aggregating $52,714.06, and the taxes for the years 1897 and 1898, amounting to $10,000.00, had been paid in so that the excess of bounty earned over tax was $42,714.06, all of which has been earned by
11 your petitioner, and $18,451.07 had been paid in addition to the $10,000.00 of taxes so collected, and there was due to your petitioner for bounty earned and for which claims approved, as aforesaid, had been presented the sum of $24,262.99, and the said sums together aggregate $42,714.06, and in the said statement so used, as aforesaid, showing the purposes for which the said act No. 263 of the Public Acts of 1899 provided for was the item "beet sugar bounty"—excess of earned bounty over tax, $42,714.06—and the said amount so due, as aforesaid, for bounty earned was under the provisions of the said act levied and collected, and under the provisions of both of said acts the moneys so owing to your petitioner for the bounty so earned by it is now in the treasury of the State of Michigan duly appropriated and subject to the warrant or order of the auditor general of the State of Michigan, and the said auditor general is required, under the provisions of said acts, to draw his warrants therefor in favor of your petitioner for the two amounts above mentioned, aggregating the sum of $24,262.99, and such tax had been collected and appropriation made, said moneys were subject to said order and warrant, and it was the duty of said auditor

general to draw such order and warrant at the time application was made to him therefor, as hereinbefore stated, and it was and still is his duty so to do; but notwithstanding said auditor general continues to refuse to deliver his order or warrant to your petitioner until so directed to do by this honorable court.

Your petitioner therefore prays:

(A.) That Roscoe D. Dix, auditor general of the State of Michigan, may be required by a peremptory writ of mandamus or order of this honorable court to draw his warrant or warrants upon the treasury of the State of Michigan in favor of your petitioner for the amounts so due to it for bounty earned for beet sugar manufactured from sugar beets raised in the year 1898, aggregating the sum of $24,262.99; and

12 (B.) That the said Roscoe D. Dix, auditor general of the State of Michigan, shall be required to show cause at a time to be fixed by this honorable court why such peremptory mandamus should not be allowed to your petitioner.

MICHIGAN SUGAR COMPANY,
By THOMAS CRANAGE, *President.*

T. A. E. & J. C. WEADOCK,
Attorneys for Petitioner.

STATE OF MICHIGAN, } ss:
County of Bay, }

Thomas Cranage, being duly sworn, deposes and says that he is president of the Michigan Sugar Company and makes this affidavit for and on its behalf; that he has read the foregoing petition by him in the name of the said Michigan Sugar Company subscribed and knows the contents thereof; that the same is true except as to those matters stated to be upon information and belief, and as to those matters he believes it to be true.

THOMAS CRANAGE.

Subscribed and sworn to before me this 8th day of May, 1900.
LUTHER G. BECKWITH,
Notary Public, Bay County, Michigan.

STATE OF MICHIGAN, } ss:
County of Bay, }

George M. Lusk, being duly sworn, deposes and says that he is a representative in the State legislature from the second legislative district of Bay county, and during the session of the legislature beginning in January, 1899, he was chairman of the ways and means committee; that he has read the sixth paragraph of the foregoing petition and knows the contents thereof, and that the same is true.

GEO. L. LUSK.

Subscribed and sworn to before me this 8th day of May, 1900.
LUTHER G. BECKWITH,
Notary Public, Bay County, Michigan.

(Endorsed:) Filed May 15, 1900. Chas. C. Hopkins, clerk supreme court.

13 At a session of the supreme court of the State of Michigan, held at the court-room, in the capitol, in the city of Lansing, on the eighteenth day of May, in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

THE MICHIGAN SUGAR COMPANY, a Corporation, Relator,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent.

On reading and filing the petition and accompanying affidavits of the relator above named and on motion of T. A. E. and J. C. Weadock, attorneys for relator, ordered that said respondent, said auditor general, do show cause to this court, on the fifth day of June next, why a peremptory mandamus should not be issued out of and under the seal of this court to compel him, the said auditor general of the State of Michigan, to forthwith draw his warrant or warrants upon the treasury of the State of Michigan in favor of relator for the amounts due to it for bounty earned for beet sugar manufactured from sugar beets raised in the year 1898, aggregating the sum of $24,262.99.

And it is further ordered that a certified copy of this order, together with a copy of the petition and affidavits aforesaid, and upon which this order is founded, be served on the said respondent at least ten days before the time herein limited for showing cause.

14 STATE OF MICHIGAN:

Supreme Court.

THE MICHIGAN SUGAR COMPANY, a Corporation, Relator,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent.

The answer of Roscoe D. Dix, auditor general of the State of Michigan, to the petition of The Michigan Sugar Company, a corporation, relator

I.

The facts alleged in the first paragraph of relator's petition are admitted.

II.

The following facts set forth in the second paragraph or relator's petition are admitted, viz., the capitalization of said company; the erection and completion of its sugar factory, and the cost of the

same. Respondent neither admits nor denies that said company was organized and its capital subscribed and paid in and its factory erected and additional capital borrowed in reliance upon and because of the adoption of act No. 48 of the Public Acts of 1897, but avers as to the portion of said paragraph containing said allegations that it is immaterial, and as to such allegations claims the benefit of a demurrer.

III.

He admits the facts alleged in the third paragraph of relator's petition.

15

IV.

He admits the facts alleged in the fourth paragraph or relator's petition.

V.

He admits the facts alleged in the fifth paragraph of relator's petition.

VI.

As to the sixth paragraph of relator's petition, he admits that the legislature of Michigan prior to June 23rd, 1899, had under consideration the bill which became on its passage act No. 263 of the Public Acts of 1899. He demurs to that portion of said paragraph containing the allegation regarding the estimates that it is alleged were submitted to the legislature and considered while said bill was under discussion, and for grounds of demurrer alleges:

1. That it is incompetent to contradict or vary the terms of said act by the evidence set forth in said paragraph, viz., by the affidavit of a member of said house.

2. That said act by its terms levies a tax to supply revenue to meet appropriations of the legislature otherwise made and is not in itself an appropriation bill, and the fact that estimates were submitted to guide the legislature in determining the amount of the tax to be levied under said act would not constitute a lawful appropriation upon which the moneys to be realized from the tax levied under said act could be drawn from the State treasury.

VII.

He admits the following facts alleged in the seventh paragraph of relator's petition, viz., that relator was the only concern engaged in the manufacture of sugar in the State of Michigan during the campaign of 1898–'9. He admits that the auditor general levied taxes under act No. 48, Public Acts of 1897, for the years

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1897 and 1898, and admits that relator has received from the State treasury $10,000 and $18,451.07 in addition, as alleged in said paragraph, but he denies that said claims were presented for $24,262.99 before act No. 263, Public Acts of 1899, was passed and while the same was under consideration, but avers, as stated in said petition, in paragraph four, that said claims were not presented to the auditor general until June 28th, 1899.

He demurs to the allegation that the aggregate sum of $42,714.06

appeared in the statement alleged to have been preparred and considered while the legislature was acting upon act No. 263, above mentioned, for the reasons of demurrer assigned in the preceding paragraph of this answer.

He admits that the full amount provided for in act No. 263 of the Public Acts of 1899 was levied and is now in the State treasury, except such amounts as have been drawn therefrom on the legal warrants of the auditor general, but denies that any of the amount so raised and in the State treasury is subject to the warrant of the auditor general or has been appropriated to pay the sugar-bounty claims set out in relator's petition.

And for further answer, to show cause why the mandamus prayed for be not granted, this respondent avers:

1. That under the constitution and laws of this State he is not authorized to issue his warrant upon the treasurer of the State, except in pursuance of appropriation made by law.

2. Act No. 48 of the Public Acts of 1897 made no appropriation to pay a bounty on sugar manufactured after December 31st, 1898, and it nowhere appears in said petition or the certificates and vouchers presented to the auditor general that the claim of relator is for sugar manufactured prior to January 1st, 1899.

3. That if said act No. 48, Public Acts of 1897, was an appropriation of the moneys of the State, it was an appropriation for private purposes, and under article IV, sec. 45, said act required for
17 its legal enactment the assent of two-thirds of the members elected to each house of the legislature, and that said act received on its final passage in the house of representatives only fifty-seven votes, less than two-thirds of all the members-elect of said house, and that said act was in consequence not enacted in accordance with the terms of the constitution and is void, and no moneys can be drawn from the treasury of the State under any authority conferred by it.

4. Act No. 263, Public Acts of 1899, does not make an appropriation to pay sugar bounties, and, if it was contemplated by the legislature that a portion of the taxes levied in pursuance of said act should be appropriated for such purposes, it was beyond the power of the legislature so to do, as, under the constitution of the State of Michigan, the legislature is limited in its power to impose taxes providing for the estimated expense of the State government, and to purposes that are in their nature public; and this respondent avers that it is not within the power of the legislature to impose a tax to pay bounties to aid private commercial ventures, and hence that act No. 48, Public Acts of 1897, is void, and act No. 263, Public Acts of 1899, would be void in case there was a tax included for said purpose, at least, to the extent of said tax.

Wherefore respondent prays judgment of the court that said petition be denied.

ROSCOE D. DIX,
Auditor General of the State of Michigan.

HORACE M. OREN,
Attorney General, for Respondent.

C. D. JOSLYN, *Of Counsel.*

(Endorsed:) Filed June 5, 1900. Chas. C. Hopkins, clerk supreme court.

18 *Opinion.*

STATE OF MICHIGAN:

Supreme Court.

THE MICHIGAN SUGAR COMPANY, Relator,
vs.
THE AUDITOR GENERAL OF THE STATE OF MICHIGAN, Respondent.

In 1897 the legislature of this State passed an act entitled, "An act to provide for the encouragement of the manufacture of beet sugar and to provide a compensation therefor, and to make an appropriation therefor."

Section 2 provides: "No money shall be paid for sugar so manufactured unless such sugar shall have been so manufactured in this State and from beets grown in the State of Michigan, and unless such sugar shall contain at least ninety per cent. crystal-ized sugar, and the manufacturer shall produce good and sufficient receipts and vouchers to show that at least $4 per ton of twenty hundred pounds has actually been paid for all beets purchased containing twelve per cent. of sugar, said twelve per cent. being the basis for valuation of the purchase price of $4 per ton. The quantity and quality of sugar upon which all of said bounty is claimed shall be determined by the commissioner of the State land office with whom all claimants shall from time to time file verified statements showing the quantity and quality of sugar so manufactured by them, the price paid the producer for the beets actually produced in this State upon which said bounty is claimed."

Section 3 provides: "The persons, firms or corporations so intending to engage in the manufacture of beet sugar in this State shall, before commencing the same, file a statement with the commissioner of the State land office setting forth their proposed undertaking, the capacity of their manufactory, the number of tons of beets they intend to manufacture per annum, and request said commissioner of the State land office to appoint a suitable weighman and inspector as hereinafter provided."

19 Sections 4 and 5 provide that the commissioner of the State land office shall appoint a weighman and inspector to keep an accurate account of the sugar manufactured and the kind and character of the beets furnished; and also provide that the firm or corporation buying the beets and manufacturing the sugar shall, in order to obtain the bounty provided by the act, pay to the seller of the beets at least $4 per ton for beets containing twelve per cent. of sugar and a sum proportionate to that amount for beets containing a greater or less per cent. of sugar.

Section 6 provides: "When any claim arising under this act is filed, verified and approved by the commissioner of the State land office as hereinafter provided, he shall verify the same to the auditor

general of the State, who shall draw a warrant upon the State treasurer for the amount thereof, payable to the person, firm or corporation to whom said sum or sums are due."

The act appropriated the sum of $10,000 for the years 1897 and 1898, and provided that if the bounty should exceed that amount, the deficit should be paid from the general fund.—Act No. 48, Public Acts of 1897.

In 1899 the legislature passed act 263, entitled "An act to provide a tax to meet the several appropriations for which a tax is not otherwise provided for the general expenses of the State government, salaries of the State officers, expenses of the State department and expenses of the legislature for the years eighteen hundred and ninety-nine and nineteen hundred."—Act No. 263, Public Acts of 1899.

Section 2 of this act provides: "The several sums appropriated by the provisions of any act to meet which this act provides a tax shall, so far as moneys are required to be paid to the boards or officers of any institution or commission, be paid out of the general fund in the State treasury to the proper board, or officer, at such times and in such amounts as the general accounting laws of the State prescribe, and the disbursing officer of such board or commission shall render his accounts to the auditor general thereunder."

It is claimed that while this last act does not in terms provide for an appropriation of any moneys to pay the bounty on beet sugar manufactured, yet that it was the intent of the legislature to provide by the act for such bounty, as a committee of the house of representatives caused a statement to be made showing the different amounts necessary to be raised; and it is claimed that this statement was an estimate of an excess of bounty over the tax previously raised, amounting to $42,714.06, and a further estimate of the amounts needed for the years 1899 and 1900 of $50,000 and $150,000 respectively.

On the other hand, it is claimed by the respondent that under date of December 2 and 29, 1898, the relator presented its claim for bounty earned, amounting to $28,451.07, which presumably covered all claims to the end of the year 1898; and that no specific appropriations were made by the act of 1899, nor any taxes levied for such bounty.

Relator claims that there is due it for such bounties the sum of $24,262. The accounts were presented to the auditor general by the relator for such amount, and payment was refused.

20 It appears that the relator is a corporation organized under the laws of the State, with a capital stock of $200,000; and that it has fully complied with all the provisions of the act of 1897 to be entitled to the bounty provided by that act.

But two questions are raised:

1st. It is claimed that there is no money in the State treasury with which to pay the bounty claimed, as the act of 1899 made no appropriation for it, and therefore the respondent properly refused to draw the warrant for the same; while on the other hand, it is claimed by relator that an appropriation was made and that though

the act of 1897 be found unconstitutional and void the relator is entitled to have the bounty paid, as the legislature has recognized by the act of 1899 the right of the relator to have the bounties earned under the act of 1897.

2d. It is claimed by respondent that the act of 1897 is unconstitutional.

We will discuss the last proposition first. This taxation is for no such public purpose that it can be upheld. There is no power in the State to authorize a tax for private purposes. Taxes can be levied only for public purposes to accomplish some government end. The legislature is the mere creature of an organic law deriving all its power from the Constitution. Its limits within that power must be admitted to be plenary, except so far as otherwise specifically limited; but outside those limits it is as powerless as if specifically prohibited. It cannot take the property of A and give it to B; nor can it tax it for the benefit of B. Here is a private corporation now calling upon the State for a sum of money to aid it in carrying on a private business, most of which money, if paid, must come out of the pockets of people who are not engaged in that business and who have no interest in it.

It is claimed by the relator that this is not a gift to the relator, but that it would not have engaged in the business but for this act of the legislature; that in reliance upon the act it built a plant at large expense and that it complied with the provisions of the act requiring it to pay to the producers of beets at the rate of $4.00 per ton; and that therefore the honor and integrity of the State are involved.

So the honor and integrity of the State might become involved under any other act however unconstitutional which the legislature might see fit to pass. What may have brought about the passage of the act of 1897 we need not discuss; the only question being whether it is within the legislative power. We need not point out specifically any particular provision of the Constitution which it violates. It is void whether it comes within any of the express provisions of the Constitution or not. It is not a law, but an act which attempts to take the property of one citizen and turn it over to another; to compel one class to donate a part of its property
21 to another. Under the express terms of the Constitution private property cannot be taken for private use, even with compensation, without the owner's consent; nor can it be taken for public use without just compensation. There is no claim here, nor can any be made, that these taxes thus imposed under the act are for any public use; nor could the State itself carry on such a business.

Counsel for relator seek to uphold this legislation by several cases cited in their briefs. Attention is called to Taylor *vs.* Ypsilanti, 105 U. S., 60, in which it was said: "In 1829 the legislature of Michigan passed an act providing for the payment from the State treasury of a certain sum, by way of bounty, for every bushel of salt manufactured by an individual, company or corporation, from water obtained by boring in Michigan, and exempting from taxation property used

for such purposes. Laws of Michigan, 1859, page 551. That law was subsequently amended; and in People *vs.* State Auditors (9 Mich., 327), decided in 1861, it was held that the relator, a manufacturing company, acquired a vested right to the amount offered by the original act, for all salt manufactured prior to the amendatory statute reducing the bounty. And the doctrines of that case were reaffirmed in East Saginaw Mfg. Co. *vs.* East Saginaw, etc. (19 Mich., 259), decided in 1869, after the passage of the act of March 22, 1869. The diligence of counsel aided by our own researches has not disclosed any adjudication of the supreme court of Michigan prior to May 26, 1870, in which the doctrine of these cases was recalled."

From an examination of the cases referred to in the above opinion in this court, it is evident that the constitutionality of the salt bounty act was not raised or passed upon. In the first case a mandamus was asked to compel the board of State auditors to allow a claim under the original act, as the board had refused payment on the ground that a subsequent act repealed the former one. In the second case a bill had been filed to restrain the collection of the taxes levied upon the property of complainant (the Salt Mfg. Co.) invested in the business of manufacturing salt. The ground for filing the bill was that the statute in force when the complainant commenced its manufacture exempted from taxation the property employed for that purpose; and complainant insisted that this statute was a contract between itself and the State and was irrepealable. The court held, however, that the statute was nothing but a bounty law and as such might be repealed at any time. On error, this was affirmed by the Supreme Court of the United States (13 Wall., 373).

22 We think the present case comes squarely within the reasoning of this court in People *vs.* Salem, 20 Mich., 452. In that case the question was the constitutionality of an act permitting townships to issue bonds in aid of the construction of railroads. It was said by Mr. Justice Cooley, beginning at p. 486: "But it is not in the power of the State, in my opinion, under the name of bounty or any other cover or subterfuge, to furnish capital to set private parties up in any kind of business, or to subsidize their business after they have entered upon it. A bounty law, of which this is the real nature, is void, whatever may be the pretense on which it may be enacted. The right to hold out pecuniary inducements to the faithful performance of public duty in dangerous or responsible positions stands upon a different footing altogether; nor have I any occasion to question the right to pay rewards for the destruction of wild beasts and other public pests; a provision of this character being a mere police regulation. But the discrimination by the State between different classes of occupations, and the favoring of one at the expense of the rest, whether that one be farming or banking, merchandise or milling, printing or railroading, is not legitimate legislation, and is an invasion of that equality of right and privilege which is a maxim in State government. When the door is once opened to it, there is no line at which we can stop and say with confidence that thus far we may go with safety and propriety,

but no further. Every honest employment is honorable; it is beneficial to the public; it deserves encouragement; the more successful we can make it, the more does it generally subserve the public good. But it is not the business of the State to make discriminations in favor of one class against another or in favor of one employment against another. The State can have no favorites. Its business is to protect the industry of all, and to give all the benefit of equal laws. It cannot compel an unwilling minority to submit to taxation in order that it may keep upon its feet any business that cannot stand alone. Moreover, it is not a weak interest only that can give plausible reasons for public aid; when the State once enters upon the business of subsidies, we shall not fail to discover that the strong and powerful interests are those most likely to control legislation and that the weaker will be taxed to enhance the profits of the stronger. I shall not question the right of the people, by their constitution, to open the door to such discriminations, but in this State they have not adopted that policy, and they have not authorized any department of the government to adopt it for them."

23 On page 495 of the case, it was said by Justice Campbell:

"It has been said to be too clear to need argument that it would be usurpation and not legislation to take the property of A and give it to B. It must be on the same ground equally illegal to tax A for the benefit of B; for the amount of property taxed against his will cannot make any difference in the principle, neither can it make the wrong any less that he has companions in misery. Taxation for private purposes is no more legal than robbery for private purposes. And where an enterprise is conducted by private persons for their own benefit, the public authorities have no control over the expenditure and no share in the profits, it is a private enterprise and not a public one, whether large or small, and whether profitable or unprofitable. No enterprise can properly be regarded as a public enterprise in which the public has no voice. For the expenditure of public money the constitution and laws provide public officers and put them under adequate control and security. The money of the people belongs in the custody of the agents of the people. Governments cannot delegate public responsibilities to private and irresponsible hands."

These views have been affirmed and reaffirmed by this court.

The first contention of counsel for relator has no more substantial foundation than the other. The act of 1897 is unconstitutional and void, and yet counsel contend that though this be found, under the act of 1899 it is entitled to the bounty there appropriated. Counsel cite in support of this proposition the case of United States *vs.* Realty Co., 163 U. S., 427.

The question there raised was entirely different from the question here. Here no specific appropriations were made by the act of 1899, by which the sugar bounties could be paid, and the legislature has not recognized the relator's claim. But it has been held several times in this State that an unconstitutional statute is a statute only in form and lacks the force of law, and is of no more saving

effect to justify action under it than as though it had never been enacted.

Mason *vs.* Perkins, 73 Mich., 303.
Adsit *vs.* Osman, 84 Mich.

The writ of mandamus must be denied.

CHAS. D. LONG.
R. M. MONTGOMERY.
F. A. HOOKER.
J. B. MOORE.
C. B. GRANT.

(Endorsed:) Filed Oct. 2, 1900. Chas. C. Hopkins, clerk supreme court.

24 At a session of the supreme court of the State of Michigan, held at the supreme court room, in the capitol, in the city of Lansing, on the second day of October, in the year of our Lord one thousand nine hundred.

Present: The Honorable Robert M. Montgomery, chief justice; Frank A. Hooker, Joseph B. Moore, Charles D. Long, Claudius B. Grant, associate justices.

THE MICHIGAN SUGAR COMPANY, Relator,
vs.
THE AUDITOR GENERAL OF THE STATE OF MICHIGAN, Respondent.

This cause having been heretofore submitted on the petition of relator, the answer of respondent, and briefs of counsel, and the same having been duly considered by the court, and it appearing to the court upon such consideration that the writ of mandamus as prayed for by relator ought not to be granted, it is hereby denied, with costs to the respondent, to be taxed.

25 STATE OF MICHIGAN:

In the Supreme Court.

THE PEOPLE OF THE STATE OF MICHIGAN *ex Rel.* MICHIGAN Sugar Company, a Corporation, Relator,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent.

To the Hon. Robert M. Montgomery, chief justice of the supreme court of Michigan:

The relator in this cause hereby petitions your honor to allow a writ of error in this cause from the Supreme Court of the United States to the supreme court of Michigan on the ground that in the opinion and judgment of said court upon an act of the legislature of Michigan, being Public Act No. 48 of the Laws of 1897, and also

upon act 263 of the Public Acts of Michigan of 1899, there is involved a Federal question which has been decided adversely to said relator. The question is whether the said opinion and judgment is as applied to relator in conflict with various provisions of the Constitution of the United States, and especially to the provisions against—

I. Impairing the obligations of a contract.

II. Denying to said relator the equal protection of the laws.

III. Depriving relator of its property without due process of law.

THOMAS A. E. WEADOCK,
JNO. C. WEADOCK,
Attorneys for Relator.

25½ [Endorsed:] 18204. Supreme court of Michigan. The Michigan Sugar Co., a corporation, relator, *vs.* Roscoe D. Dix, auditor general of the State of Michigan, respondent. Petition for writ of error. Filed Nov. 10, 1900. Chas. C. Hopkins, clerk. Thomas A. E. Weadock, John C. Weadock, att'ys for petitioner.

26 STATE OF MICHIGAN:

In the Supreme Court.

THE MICHIGAN SUGAR CO., a Corporation, Relator,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent.

Assignment of Errors.

And now comes the above-named relator, by Thomas A. E. Weadock and John C. Weadock, its attorneys, and alleges that in the judgment of the court in this cause there is manifest error:

1. That the court erred in holding that act No. 48 of the Public Acts of Michigan for the year 1897 was unconstitutional and void, and that relator had not acquired and could not acquire any rights thereunder. The judgment of said court in said holding is in conflict with the Constitution of the United States, and especially with the provision forbidding any State to impair the obligations of contracts, and that clause of the fourteenth amendment to said Constitution which forbids the States to deprive any person of his property without due process of law.

2. Said judgment is erroneous in holding that relator was not entitled to the bounty on sugar manufactured by it in said State and already earned under its contract with the State of Michigan, and payment of which was provided for by act No. 263 of the Public Acts of Michigan for the year 1899, thereby denying to said relator the equal protection of the laws and depriving it of its property without due process of law.

27 3. Said judgment is erroneous because it is in favor of said respondent and against said relator, whereas it should have been in favor of said relator and against said respondent.

For the errors alleged said relator prays that the said judgment may be reversed and judgment be given against said respondent with costs.

THOMAS A. E. WEADOCK,
JOHN C. WEADOCK,
Attorneys for Relator.

November 10th, 1900.

27½ [Endorsed:] State of Michigan. In the supreme court. 18204. The Michigan Sugar Co., a corporation, relator, *vs.* Roscoe D. Dix, auditor general of the State of Michigan, respondent. Assignment of errors. Filed Nov. 10, 1900. Chas. C. Hopkins, clerk. Thos. A. E. Weadock, John C. Weadock, att'ys for relator.

28 *Bond.*

Know all men by these presents that we, The Michigan Sugar Company, a corporation, organized and doing business under the laws of the State of Michigan, at Bay City, Michigan, as principal, and Thomas Cranage and Nathan B. Bradley, as sureties, are held and firmly bound unto Roscoe D. Dix, auditor general of the State of Michigan, and his successor in said office, in the full and just sum of five thousand dollars ($5,000.00), to be paid to the said Roscoe D. Dix, auditor general of the State of Michigan, his successor, his certain attorney or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, administrators, executors, jointly and severally, by these presents.

Sealed with our seals and dated this first day of November, in the year of our Lord one thousand nine hundred.

Whereas lately, at a session of the supreme court of Michigan, in a suit depending in said court between said Michigan Sugar Company, relator, and said Roscoe D. Dix, auditor general of the State of Michigan, a judgment was rendered against the said Michigan Sugar Company, and the said Michigan Sugar Company having obtained a writ of error and filed a copy thereof in the clerk's office of said court to reverse the judgment in the aforesaid suit, and a citation to the said Roscoe D. Dix, auditor general of the State of Michigan, citing him and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Michigan Sugar Company shall prosecute its said writ of error to effect and answer all damages and costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and effect.

MICHIGAN SUGAR COMPANY, [L. S.]
By THOMAS CRANAGE, *President.*

29 THOMAS CRANAGE. [L. S.]
N. B. BRADLEY. [L. S.]

Signed and sealed in the presence of—
JNO. C. WEADOCK.
M. M. LEWIS.

Approved this 10th day of November, A. D. 1900.

R. M. MONTGOMERY,
Chief Justice.

30 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Roscoe D. Dix, auditor general of the State of Michigan, respondent, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of Michigan, in a suit wherein The Michigan Sugar Company, a corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Robert M. Montgomery, chief justice of the supreme court of Michigan, this tenth day of November, in the year of our Lord one thousand nine hundred.

R. M. MONTGOMERY,
Chief Justice, Supreme Court of State of Michigan.

Due personal service of this citation is hereby acknowledged this 10th day of November, 1900.

HENRY T. CHASE,
Deputy Att'y Gen'l, Att'y for Def't in Error.

STATE OF MICHIGAN, }
County of Ingham. }

On this tenth day of November, in the year of our Lord one thousand nine hundred, personally appeared Thomas A. E. Weadock before me, the subscriber, a notary public for the county of Ingham, State of Michigan, and makes oath that he delivered a true copy of the within citation to John F. Wilkinson, deputy auditor general of Michigan, Roscoe D. Dix, auditor general of the State of Michigan, defendant in error, being necessarily absent from his office.

Sworn to and subscribed the 10th day of November, A. D. 1900.

HARRY A. SILSBEE,
Notary Public, Ingham County, Mich.

30½ [Endorsed:] State of Michigan. In the supreme court. 18204. The Michigan Sugar Co., a corporation, relator, *vs.* Roscoe D. Dix, auditor general of the State of Michigan, respondent. Citation to appear in the Supreme Court of the United States on behalf of said relator, plaintiff in error. Filed Nov. 10, 1900. Chas. C. Hopkins, clerk. Thomas A. E. Weadock, John C. Weadock, att'ys for relator and plaintiff in error. Jno. F. Wilkinson.

31 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Michigan, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Michigan, before you or some of you, between The Michigan Sugar Company, a corporation, relator, against Roscoe D. Dix, auditor general of the State of Michigan, respondent, a manifest error hath happened, to the great damage of the said The Michigan Sugar Company, as by its complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 9th day of November, in the year of our Lord one thousand nine hundred.

[Seal of the Circuit Court, Eastern District of Michigan.]

WALTER S. HARSHA,
Clerk of the Circuit Court of the United States for the Eastern District of Michigan.

Allowed by—
R. M. MONTGOMERY,
Chief Justice of the Supreme Court of the State of Michigan.

31½ [Endorsed:] 18204. Filed Nov. 10, 1900. Chas. C. Hopkins, clerk supreme court.

To the Supreme Court of the United States:

The execution of the within writ appears by the transcript of record hereto attached.

Lansing, Michigan, November 21, 1900.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of Michigan.

32 *Copy of Journal Entries in Journal No. 29, p. 18204.*

Parties.	Plaintiff's attorneys.	Defendant's attorneys.
The Michigan Sugar Company, relator, *vs.* The Auditor General, respondent.	T. A. E. & J. C. Weadock.	Horace M. Oren. Charles D. Joslyn, of counsel.

Journal.	Date.	Proceedings.
	1900.	
	May 15	Petition filed.
Q. 113...	May 18	Order allowed, returnable June 5, 1900.
	June 5	Submitted on briefs.
Q. 206...	Oct. 2	Writ denied with costs. Opinion filed.
	Nov. 10	Petition for writ of error filed.
	" "	Writ of error filed.
	" "	Assignment of errors filed.
	" "	Bond on appeal filed.
	" "	Citation, with proof of service, filed.
	Nov. 21	Return made to Supreme Court of United States.

33 Supreme Court of the State of Michigan.

THE MICHIGAN SUGAR COMPANY, Relator and Plaintiff in Error,
vs.
ROSCOE D. DIX, Auditor General of the State of Michigan, Respondent and Defendant in Error.

STATE OF MICHIGAN, } ss:
In Supreme Court, }

I, Charles C. Hopkins, clerk of the supreme court of the State of Michigan, do hereby certify that the annexed and foregoing is a true and correct copy of the record and of all proceedings had and entered in the above-entitled cause by said court, including the written decision and reasons therefor, signed by the judges of said court and filed in my office, as appears of record and on file in said cause; that I have compared the same with the originals and it is a true transcript therefrom and of the whole thereof; that attached thereto are the petition for writ of error, the writ of error, with allowance endorsed thereon; a copy of the bond to the adverse party, duly approved, filed with the writ of error; the citation, with proof of service endorsed thereon, and the assignment of errors in the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed

the seal of said supreme court, at the city of Lansing, this twenty-first day of November, A. D. 1900.

[Seal of the Supreme Court of Michigan, Lansing.]

CHAS. C. HOPKINS,
Clerk Supreme Court of the State of Michigan.

Endorsed on cover: File No., 17,976. Michigan supreme court. Term No., 491. The Michigan Sugar Company, plaintiff in error, *vs.* Roscoe D. Dix, auditor general of the State of Michigan. Filed November 24th, 1900.